

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9279 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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HARISING KHODAJI THAKORE

Versus

STATE OF GUJARAT

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Appearance:

MR HR PRAJAPATI for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 30/03/98

ORAL JUDGEMENT

By this application under article 226 of the Constitution of India, the petitioner who is a detenue, calls in question the legality and validity of the detention order dated 11.10.97 passed by the Commissioner of Police for the City of Ahmedabad invoking his powers under Section 3 of the Gujarat Prevention of Anti-social Activities Act (for short, 'the Act').

2. The petitioner was convicted of one or another offence, and numbers of his criminal activities were found increasing to an alarming extent. The police Personnel were worrying as it was a hard task for them to apprehend the petitioner and proceed against him legally. The people were harassed and at times were brutally beaten. The Police Commissioner having come to know the criminal activities disturbing the public order studied the papers placed before him. He could know that about 3 complaints were lodged against the present petitioner with Ellisbridge, Maninagar and Shaher Kotda Police Stations. All those complaints were of the offence punishable under Section 379 read with 114 of the Indian Penal Code. It was alleged by the complainants in these cases that the petitioner committed the thefts of tape-recorders, electric motors and tape with radio. The Police Commissioner after inquisition knew that in fact the petitioner was a head strong person and his activities harassing people and putting the people to different risks endangering their lives were going berserk. Any how his activities were required to be curbed. The Police Commissioner then thought it fit to have some statements before him but he could not get the statements from the members of the Public because every one was under the fear of violence did not make any statement or file a complaint. After considerable persuasion when the assurance was given that the facts disclosing their identity would be kept secret, some of the persons gave their statements from which the Police Commissioner also came to know that the petitioner was extorting money from the shop-keepers, and was causing harm to anyone who came in his way and did not succumb to his pressure. Those who refused to bend his way had to face dire consequences. The Police Commissioner then thought that action as per law was promptly required to be taken but he also found that any action under the general law appearing dull would be a futile exercise. He therefore thought it fit to pass the impugned order pursuant to which the petitioner has been arrested and he is kept under detention. He has therefore filed this application challenging the legality and validity of the order.

3. At the time of hearing before me on several grounds submissions were made, but the learned advocate representing the parties tapered off their submissions confining to the only ground namely public order later on. According to the learned advocate representing the petitioner no case is made out on the basis of which one can say that the activities of the petitioner are the challenge to the maintenance of the public order. Above

stated few cases of theft registered would not be sufficient to hold that the activities of the petitioner are the challenge to the maintenance of public order, in that case it would be a question of law and order.

4. Stray incident would not disturb the public order. In order to establish that the activities of the detenue are the challenge to the maintenance of the public order, it must be shown that the activities are not affecting the individual, but the public at large and his activities create insecurity or panic in general public. If a man commits a theft of ordinary nature thereby it would not be causing alarm to the general public. It would remain confined to between the victim and the thief who committed the theft. If the person is considered to be high handed or feary by nature, his high handness unless causes disturbances to the public order would not be a ground to hold that his activities are a threat to the public order. On perusal of the order only 3 stray incidents are found, and they are of theft and not of alarming nature but ordinary type of thefts. Such stray incidents would not cause alarm to the general public and would not be a challenge to the public order. Such cases therefore would be the cases of law and order and not the cases disturbing the public order. The order of detention therefore in such cases will not be just and proper. The same has to be quashed.

5. For the aforesaid reasons, the application is allowed. The order of detention dated 15.10.97 is hereby quashed and set aside, and the petitioner is ordered to be set at liberty forthwith, if no longer required in any other case. Rule accordingly made absolute.

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